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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
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LESLIE WHITELEY, et al.,
Plaintiffs,
vs. Case No. 303l84
RAYBESTOS-MANHATTAN, INC.,
et al.,
Defendants.
/

DEPOSITION OF THOMAS HAMM, DVM, Ph.D.
Tuesday, November l6, l999

REPORTED BY:
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I N D E X

Deposition of THOMAS E. HAMM, DVM, Ph.D.

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Company, et al.,

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BE IT REMEMBERED that, pursuant to Notice of Taking Deposition and Request for Production of Documents, and on Tuesday, November 16, 1999, commencing at the hour of 1:15 a.m. thereof, at the Law Offices of SHOOK, HARDY & BACON, LLP, One Market Plaza, Steuart Street Tower, 9th Floor, San Francisco, California, before me, DOLORES KILGARIFF, duly authorized to adminster oaths pursuant to Section 2093 (b) of the California Code of Civil procedure, personally appeared THOMAS E. HAMM, D.V.M., Ph.D., called as a witness on behalf of the Plaintiffs, and the said witness, being by me first duly sworn, was thereupon examined and testified as herinafter set forth.

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The Law Offices of WARTNICK, CHABER, HAROWITZ, SMITH & TIGERMAN, 101 California Street, Suite 2200, San Francisco, California 94111, represented by MADELYN J. CHABER, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.

The Law Offices of SHOOK, HARDY & BACON, LLP, One Marekt Plaza, Steuart Street Tower, 9th Floor, San Francisco, California 94111, represented by GERALD V. BARRON, Attorney at Law, appeared as counsel on behalf of the Defendants Phillip Morris Incorporated and

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R. J. Reynolds Tobacco Company.

The Law Offices of HAIGHT, BROWN & BONESTEEL, LLP, 100 Bush Street, 27th Floor, San Francisco, California 94104, represented by FELICIA Y. FENG, Attorney at Law, appeared as counsel on behalf of the Defendant Manred.

ALSO PRESENT: John Monica and Vicky Thompson.

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MR. BARRON: I just want to note for the record that it is 1:15 and we are waiting for Plaintiffs' counsel. I'm not sure where she is. We would like to believe she is at least by now en route.

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The deposition was scheduled for a time earlier this morning. It was then moved to 10:30 pursuant to a request of Plaintiffs' counsel so that she could be allowed, or someone on her behalf could be allowed to review some material that was here in this office that related potentially to the witness' testimony, and then it was moved again to approximately 12:30. We set the time of 12:30, realizing that we would hope that I would be back from a court appearance that was due to commence at eleven by that time.

I called the Plaintiffs' office at approximately 12:40 to let them know that I had arrived at about 12:35, a few minutes late, and had been told Ms. Chaber had left to go back to her office and she was awaiting a call.

It's my understanding also that Linda Tam of this office, pursuant to a call that we made to her from our Cell. phone on the way back from court, called Ms. Chaber's office some minutes before I did to let her know that, in fact, we had left court, and that Lucy Mason and I would be back, available for a deposition

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just a few minutes past the hour of 12:30 that we had talked about as a time that we would like to be back and we would start the deposition.

And I think an attorney from one of the co-defendant asbestos companies was also here at that time and has been here since at least 12:40 or so, 12:30 or so.

Is that correct?

MS. FENG: Yes, it is.

MR. BARRON: Okay.

(Brief pause.)

(Whereupon, Ms. Chaber enters the deposition room at 1:18 p.m.)

EXAMINATION BY MS. CHABER

MS. CHABER: Q. Good afternoon, Doctor. My name is Madelyn Chaber. I represent Leslie and Leonard Whiteley in an action against Phillip Morris and R. J. Reynolds.

You have been deposed previous to this deposition today?

A. That's correct.

Q. How many times?

A. I think this is my eighth deposition.

Q. Are you generally familiar with the rules of depositions?

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A. Generally, yes, I am.

Q. Okay. You understand I'm going to be asking questions, and you're going to be providing answers?

A. I understand that.

Q. And you're under oath, and it's the same oath as though you were in a court of law?

A. I understand that.

Q. I assume that you will tell me if you do not understand any of my questions. Is that a fair understanding?

A. I will.

Q. And if you don't tell me that, would it be a fair understanding on my part to assume that you did understand the question?

MR. BARRON: Well, it would be fair to

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assume that he thought he understood, obviously.
MS. CHABER: I understand that, Gerry. I don't think you ever understand what I say, but --
MR. BARRON: I think we understand each other in that regard, so --
MS. CHABER: Well, I'm asking the witness.
MR. BARRON: That's fair.
MS. CHABER: Q. You know that the court reporter hates when people talk at the same time because that makes her job much more difficult, and so I will

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try to let you finish your answers if you would let me finish my questions.
Is that fair?
A. I'll try to do that.
Q. Okay. When were you first contacted with respect to this case?
A. This particular case?
Q. This particular case.
A. I would say about the middle of last month, maybe a little earlier. I hadn't thought it of that way. It may have been a month ago, but it's been fairly recently.
Q. How was that contact made?
A. Through the Kansas City office of Shook, Hardy & Bacon.
Q. Is there a particular person you were dealing with?
A. Principally, with John Monica and Vicky Thompson.
Q. And they're lawyers in the Kansas City office of Shook Hardy & Bacon?
A. John is a lawyer, and Vicky runs the place.
Q. When you say --
A. She's not a lawyer.
Q. When you say Vicky runs the place, does she

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have a particular title?
A. I shouldn't have said that.
Q. No. It's probably true, but does she have a particular title?
A. Vicky is right here.
Q. Does she have a particular title?
A. Vicky is called administrative assistant or -- I have a million of her cards, but I can't remember today exactly what her title is.
Q. Okay. And you indicated you have been previously deposed eight times?
A. I think this is my eighth time, but there's a list of them in my CV --
Q. Okay.
A. -- in case I've miscounted, but I believe I've had seven prior to this. That might be wrong by one or two.
Q. All right. But we can certainly check your CV and count the number?
A. That's correct.
Q. In each of the depositions previous to this one, have Mr. Monica and Ms. --
A. Thompson.
Q. -- Thompson been present?
A. No. It has varied. This has been over a

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couple of years time, and other people have been present representing me.
Q. When contact is made with you about testifying in a case, is it by Mr. Monica or by Ms. Thompson?
A. Generally, Vicky Thompson is the principal person who contacts me.
Q. Do you have any kind of file specific to the Whiteley case?
A. I'm a notebook-oriented person.
MR. BARRON: Does that mean yes or no?
THE WITNESS: Oh, yes.
MS. CHABER: Q. And what form is that file in?
I think you gave me a clue that it might be a notebook.
A. I'm sorry I did that.
It's a notebook.
Q. Do you have that notebook with you?
A. No.
Q. Where is that notebook?
A. It's in my home office.
Q. And does that notebook -- is it a looseleaf binder?
A. Yes.

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Q. Can you give me an idea of -- is it three-ring?
A. It is.
Q. Can you tell me how many inch binder it is?
A. It's a three-inch binder.
Q. How much of the three inches of that binder is filled with any material?
A. Half an inch.
Q. What is contained within that half-inch of materials?
A. The Complaint, a list of Plaintiffs' witnesses, expert witnesses, and a list of defendants' expert witnesses, and that's all that's in the binder.
Q. Did you make any notes on any of the documents that you just indicated?
A. No, I did not.
Q. Was there any cover sheet or transmittal letter or memo or document that accompanied these materials?
A. No.
Q. They just came in an envelope?
A. They generally come in a Fed Ex envelope, and they usually have Vicky Thompson's business card taped to them.
Q. And from past experience, getting an

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envelope with some materials in it with Vicky Thompson's card attached to it, is that the general manner that materials are transmitted to you?
A. It's the general manner, yes.
Q. Are there other ways that materials are transmitted to you?
A. Not that I can think of.
Q. When was the first time you were ever contacted by anyone with respect to tobacco and litigation?
A. Regarding tobacco and litigation, I could

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say would say it was about 1995 or '6.
Q. And that would have been through the Shook Hardy office?
A. That's correct.
Q. Of these seven depositions that you gave previous to this one -- and I realize that that's an approximation -- how many of those cases that you were involved in resulted in you testifying in court?
A. None of them.
Q. Have you ever testified in court?
A. No, I have not.
Q. For any reason?
A. No, I have not.
Q. One of the cases that you were deposed in

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was the State of Minnesota's trial against the tobacco industry?
A. That's correct.
Q. And you did not testify in that case?
A. I did not.
Q. Do you know why you did not testify in that case?
MR. BARRON: You mean at trial again, of course.
MS. CHABER: Yes. We're talking about testifying in court as opposed to a deposition.
MR. BARRON: I just wanted to make sure because it wasn't linked necessarily in the question. I think we all understood it, but --
THE WITNESS: I'm sorry, I forgot the question.
MS. CHABER: Q. Do you have any knowledge or understanding as to why you did not testify in the State of Minnesota's case against the tobacco industry --
A. No.
Q. -- in court?
A. I have no idea.
Q. Did you have any discussions with anyone about testifying in court?

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A. Only to the extent that they asked me if I would go to the deposition and would I be willing to testify, and then I've never had any other conversation regarding that matter.
Q. Was your answer to the question about whether -- obviously, you went to the deposition but was your answer to the question about whether you'd be willing to testify in court, "Yes?
A. It was.
Q. Have you been asked to testify in the present case?
A. That's correct.
Q. Besides this deposition?
A. I had been asked if I would testify in court, and I've said yes, I would.
MS. CHABER: Okay. Let me just do a little housekeeping.
I'd like to attach as Plaintiffs' first in order, a portion of the Disclosure of Expert Witnesses of Defendants Philip Morris and R. J. Reynolds, the portion, two-page portion relating to Dr. Hamm, and that would be Plaintiffs' 1.

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(Plaintiffs' Exhibit 1 was marked for identification.)
MS. CHABER: Plaintiffs' 2 would be the
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Notice of Deposition of Dr. Hamm with production of documents.
(Plaintiffs' Exhibit 2 was marked for identification.)
MS. CHABER: Q. Dr. Hamm, were you personally involved at all in any way with the disclosure that starts at the bottom of the page and goes on to page 2 that's been marked as Plaintiffs' 1?
MR. BARRON: Objection; vague and ambiguous as to the phrase, quote, "involved in any way," close quote.
THE WITNESS: I wrote this.
MS. CHABER: Q. And Plaintiffs' Exhibit 2, have you ever been shown that document?
A. I saw this document yesterday in this office.
Q. I would ask you to look at the Exhibit A attached, and I realize you may need a few moments to review it, but if you would look at the Exhibit A to Plaintiffs' 2 with respect to the documents, I'll have a couple of questions for you on that.
A. I'm sorry, look at which page?
Q. I opened it right to the page.
A. Okay. I'm sorry. I thought you were specifying a particular part.
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Q. No.
A. (Reviewing document).
I looked at this yesterday.
Q. Okay. Do you believe you have brought all documents responsive to that request?
A. I don't, in fact, possess many of the documents that are on here.
Q. Okay. Well, how about --
A. I believe that I have brought everything that I possess in this case. The 22 boxes represent all the documents that I possess.
Q. I'm sorry I don't have two copies of this with me.
Can you tell me which of these categories of documents you do not believe you possess?
You can just identify them --
A. I've never looked at any of the internal company documents, so some of these refer to those.
I think, in general, as I stated earlier, all the documents that I have I brought are in the 22 boxes. The ones that refer to like any correspondence to the companies and so forth, I've never looked at any internal company documents.
Q. Does that include your not having looked at any internal company research that has not otherwise
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been published?
A. That's correct.
And I should amend my earlier answer slightly in that I have seen some company documents that were provided to me by plaintiffs' attorneys in deposition, but other than that, I haven't seen any, and as part of my work I didn't look at any.

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Q. Presumably, those plaintiffs' attorneys were doing their job right, they attached them as exhibits so I'd know which ones they were.
A. If they're my copies of my copies of the deposition, the privileged documents are always removed, so they would be referred to in the deposition, but if they're the exact copies of the ones that are given to me, those are removed.
Q. Okay.
A. They were removed in my copies, so I don't know if you my copy or you have the official court copy or what.
Q. I may have none of the copies. I'm just trying to see if -- And I understand what you responded to, so I think we're fine.
Were there any other items or categories there that you believe are not contained within the materials that you've provided?

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A. Well, we would probably have to discuss what each of these mean in more depth but everything I have is in the 22 boxes. And I didn't have none-peer review articles submitted for publication. I didn't have any of those kind.
I looked at the end product of the research, except there were certain cases in the documents I looked at where some of this material may have been in there, and that's in the 22 boxes.
MS. CHABER: We noted that the boxes are in another room, and shortly we'll go to them and to see if we can deal with that directly. So we'll come back to the specifics of this.
Okay. Plaintiffs' 3 will be the document provided to me by counsel entitled "Materials Principally Relied Upon By Thomas E. Hamm, Jr., DVM, Ph.D."
That consists of a two pages of lists of documents, plus selected scientific publications that number 1 to 77, and a list of publications resulting from CTR supported contract research with Microbiological Associates, Inc.
(Plaintiffs' Exhibit 3 was marked for identification.)
MS. CHABER: Q. Did you prepare this

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document, sir, that's Plaintiffs' Exhibit 3?
A. Yes, I did.
Q. How did you go about preparing this document?
A. What I do is whenever I've selected something or look at something, I communicate that to Vicky Thompson, and she keeps a running list. So we try to keep track of everything that I looked at.
Q. I notice at the top that it says "Falise, et al..., and dated October 27th, 1999.
First of all, is this the most current list of materials that you have relied upon?
A. It is because I think, in fact, it's been updated to include the three things I told you were in my notebook, the Whiteley Complaint and the two lists of experts, and I --
Q. Can you direct me to where that is?
A. I think it's on the very last page.

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MR. BARRON: I think you're looking at a different document. That's part of the problem.
THE WITNESS: I'm sorry.
MR. BARRON: That's all right. You've got two that are paper-clipped together.
THE WITNESS: It's on the back of the second -- of the document that has everything, the very

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last page.
MS. CHABER: Okay. Let's just clear this up then.
Plaintiffs' Exhibit 4 will be a document entitled "Document Index for Thomas E. Hamm, Jr., Ph.D., DVM," and that consists of four pages of chronicling types of documents, and then further document indexes and supplemental list of documents and and so forth.
(Plaintiffs' Exhibit 4 was marked for identification.)
MS. CHABER: Q. The creation of this document is that, as you just described, that Vicky Thompson and you would coordinate the keeping of this information?
A. That's correct. Whenever I look at something or are shown something, Vicky adds it to the list, and then I check the list in an attempt to make sure everything is on there.
Q. Okay. And what you were just noting, because we were looking at two different documents, was that the last page of this says "Supplemental Document Index" dated November 12, 1999.
Correct?
A. That's correct.
Q. And I notice "Hamm Falise expert report

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10/28/99 with all attachments except CV." That wasn't something provided to you in the Whiteley case, was it?
A. No. That's something that I wrote as part of participating in that case, and it just got -- the list just got updated, and these are the four things that needed to be put on the list since a couple of weeks ago.
Q. Okay. And the three things relating specifically to the Whiteley case are the three things you told me about which are the last three items on this page?
A. That's correct.
Q. Now, it says "Whiteley Complaint 4/30/99, Privileged portions redacted." Can you tell me what that means?
A. Sometimes even in the Complaint, references are made to internal company documents that are privileged documents. So even in the Complaint, that will be redacted before it's sent to me.
That's my understanding of it.
Q. Okay. And you have this Complaint in its redacted form in this binder which is not here today; is that correct?
A. That's correct, but it's my understanding that this -- well, I think this information is in the 22

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boxes. I think everything I have is in there. If not, that was our intent.
Q. Okay. We will check to see if the redacted

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Complaint is in the boxes. If not, I would request that you provide that to counsel to provide to me.
A. That will be fine.
Q. Okay. And just to go back now to 3, since we were actually talking about Exhibit 4 when you were responding to my earlier questions, is everything that's listed on Exhibit 3, contained within Exhibit 4?
A. That was the intent, but I'm not certain that's the case.
Q. You've never cross-checked?
A. No, I haven't.
Q. And you don't know if Ms. Thompson --
A. It's possible that something -- The intent was that everything would be on this list, and a good effort has been made to do that, but I couldn't --
Q. And that's Exhibit 4 you're referring to?
A. Excuse me, Exhibit 4.
Q. That's okay.
A. -- but sitting here today, I can't guarantee that, but that's what we tried to do.
Q. Was Exhibit 3 created in the same manner that you described for the creation of Exhibit 4?

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A. It's created in that --
Yes. I continue to say -- These are things that I've looked at, and continue to put them on the list, and I continue to say it may be something that I rely on more than the total volume of information.
I rely on everything in the 22 boxes to some extent, but certain pieces are more important to what I'm looking at. In some of the jurisdictions, it's my understanding they've asked us to prepare the list in this manner, and so that's why we've done it.
Q. Okay. And Exhibit 3 is the relied upon or attempt to provide a subset of documents that you find more significant in your opinions than others? Would that be a fair way to characterize it?
A. Well, I rely on all the documents, and we call this the principally relied on because many of these documents are more central to some of my basic positions, but I rely on all the other documents as well because I'm asked other questions about other aspects.
Q. Did you choose the documents that are on the list of the materials principally relied upon, as opposed to anyone else choosing or suggesting that they be included?
A. I chose all the documents on both lists, and then within -- and I also made a special choice of these

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documents to get them onto the other list.
Q. But what I'm trying to understand is was that you acting by yourself making those decisions, or was that you in conjunction with anyone else?
A. I made the decisions.
Q. Were you working in conjunction with someone else even though you made the decisions?
A. I work with -- Vicky Thompson compiles the list, but I make the decisions of what's on the list. I don't physically type them or distribute them or copy them, or those kind of things.
Q. I'm just trying to determine the items as opposed to the format.
A. I understand.

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MS. CHABER: Okay. And then Plaintiffs' Exhibit 5 is your CV, and it's 44 pages.
(Plaintiffs' Exhibit 5 was marked for identification.)
MS. CHABER: Q. Is your CV current and up-to-date?
A. Yes, it is.
Q. Are there any publications, pending publications, not listed on your CV?
A. They're all listed.
Q. How much do you charge, sir, an hour for

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deposition testimony?
A. $350 an hour.
Q. To make this clean and neat --
A. I guess I should have said more.
I'm sorry.
MR. BARRON: May I make a suggestion --
MS. CHABER: Sometimes the lawyers represent numbers to us, and then we get to the deposition and we find out they're wrong.
THE WITNESS: I shouldn't have said anything. I apologize.
MS. CHABER: No. I just want to make sure that I had the correct amount on the check, and I'll give you two $350 checks, and see how fast and quick I can be.
MR. BARRON: Let me make a suggestion.
We know you were kidding and we laugh at your jokes, but sometimes jokes like that don't get well transcribed in an understandable way in a bare transcript, so you need to be a little careful about jocularity.
MS. CHABER: You don't want us to get too serious here, Gerry. Come on. This is me.
Q. Do you charge a different sum for trial testimony?

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A. I plan to. I have never been at trial yet, but the fee I set several years ago was $450 an hour.
Q. Does that include travel time?
A. No. I charge $250 an hour, which is my standard rate for just looking at things. It doesn't seem fair to me to charge what I have, but I have to charge something because I'm not back doing something else.
Q. When you say looking at things, does that include travel time, which I think was my original question.
A. Yes. I charge 250 an hour with an eight-hour cap for travel time, eight hours per day for travel time.
Q. Okay. Let me just see if I understand it.
If you're traveling, you charge at the $250 rate, and you cap that at eight hours, assuming that you're not doing something else on your travel day?
A. Yes. For the times I'm not doing anything, that's the charge, and it's 350 an hour when I'm actually being deposed.
Q. And is it the same --
Well, which charge is it when you're consulting or meeting with attorneys as opposed to being in a deposition having a deposition taken?

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A. It depends. If it's simply to discuss papers and so forth, it's $250 an hour. If it's to do something like about talk a deposition or so forth, it's $350.
Q. Do you have an estimate of how much you have or will bill in this case to date?
A. They only start --
MR. BARRON: Do you have an estimate, yes or no?
THE WITNESS: I have an estimate, yes.
MR. BARRON: Why don't you listen to the question?
If we hope to get you out of here at a decent hour, you're going to have to try to listen more carefully to the question, and be responsive to it.
MS. CHABER: You know, Gerry, for someone who spends time telling me not to coach witnesses, I would appreciate it if you'd allow the witness to answer the questions without coaching and without your speaking objections.
Try legal objections, and we can stay on track here. I don't mind if you make objections. I think you're absolutely entitled to make objections. I would just appreciate if it if you'd keep them to the legal basis.
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MR. BARRON: I don't think I was coaching, because I didn't suggest any type of an answer other than --
MS. CHABER: You cut him off, Gerry.
MR. BARRON: Let me finish.
-- other than be careful about making sure he responds to your question, and I think the first time I did it, frankly, I thought you deserved a yes or a no, which most people want to have even if there's going to be some qualification or expansion of the answer afterwards, and I got an affirmative yes from him.
I'm only suggesting that he try to be responsive, and if he wants to say something afterwards, that's fine, as far as I'm concerned.
MS. CHABER: I'm surprised you're concerned at me getting the answers that I might want, like yes or no, or whatever, Gerry. It certainly sounded like coaching, and I'm sure since you explained to me you meant nothing by it, that you will not continue to do that but, rather, if you have an objection, please make legal objections, and we'll go on from there.
I have no, you know -- I believe lawyers are entitled to make objections if they think that they're appropriate. That wasn't an objection.
Now, can I have the court reporter please go
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back to my question?
(Whereupon, the record was read as follows:
"Q. Do you have an estimate of how much you have or will bill in this case to date?")
THE WITNESS: Yes.
MS. CHABER: Q. And what is it?
A. I billed only four hours last month, and this month I've, prior to coming here, spent approximately 50 hours.
Q. And the four hours last month were at which

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of the rates?
A. Two-fifty.
Q. And the 50 hours prior to coming here were at what rates?
A. Some are at 250, and some are at 350.
Q. Do you have a total dollar amount that that 50 hours translates into?
A. I honestly don't. That will be the bill I'll submit at the end of this month. It hasn't been prepared yet.
Q. Do you anticipate having to do additional work between now and the end of the month in order to prepare to testify for trial?
A. I do.
Q. Do you have any estimate of how many hours
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that would be?
A. I don't.
Q. The four hours last month, what did those consist of?
A. Looking at things like the Complaint and the list of witnesses, and that's all I can think of.
Q. The 50 hours this month, being -- Where are we? -- mid-November?
A. Some of that was preparation to come to this deposition.
Q. What did you do to prepare to come to this deposition?
A. I went to Kansas City and met with the lawyers at Shook Hardy & Bacon, and I read some -- I looked at materials that I have.
Q. Is this materials that you were seeing for the first time, or rereviewing materials, or both?
A. I'm continuously sort of looking at this issue and looking, so it's very difficult to tell you exactly what it was, but that's the kind of thing, when I'm thinking about an issue, I'll look at something to see if -- to refresh my recollection to see if I remembered it correctly.
Q. What issues were you looking at with respect to preparing for Ms. Whiteley's case?
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A. One of the things I can remember I did specifically was I re-read my deposition from -- the last deposition had just been delivered to me, and I thought it would be useful to read it and listen to the questions in a sense, read the questions and try to answer them and see if my answers were the correct ones.
Q. What deposition was that?
A. The Ohio Ironworkers Union, and I selected it simply because it had just been delivered to me.
Q. Now, that is the case that went to trial. Were you aware of that?
A. There are so many cases that -- I believe that one did go to trial.
Q. And given that you testified earlier that you've never testified in court, I take it you did not testify in the Ohio Ironworkers Union case?
A. That's correct.
Q. Do you have any knowledge or any understanding as to why you did not testify in that trial?
A. No, I don't.

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Q. Do you have any belief as to why you did not testify in that trial?
A. No.
Q. Did anyone discuss with you testifying in
00032
that trial?
A. Whenever I'm asked if I'll go to a deposition, I'm asked if I'd be willing to testify, and I always say yes.
Q. And were you, ready willing and able to testify in the Ohio Ironworker Union case?
A. Yes, I was.
Q. What else did the 50 hours consist of? You met with the Shook Hardy lawyers --
(Brief interruption.)
MS. CHABER: Sorry for the interruption.
Q. You met with the Shook Hardy lawyers, you reread your last deposition. What else did you do?
A. There was travel time because I went to Kansas City, and I was there for more than one day.
Q. How many days were you in Kansas City?
A. Approximately -- well, I had to come in the night before, and then I stayed a day and a morning, and then I left. So I was with them approximately one-and-a-half days, and I had a travel day before, and a half day travel back.
Q. So did you meet with the Shook Hardy lawyers for one-and-a-half days?
A. Approximately. We didn't meet -- It depends on how you define a day.
00033
Q. Can you give me an idea how many hours you met with the Shook Hardy lawyers or anyone -- I understand Ms. Thompson isn't a lawyer -- or anyone from the Shook Hardy office?
A. I don't remember exactly, but it was -- we met for about four or five hours one day, and about three hours another day. I have accurate records of that. I haven't billed yet, and sitting here today, I don't remember the exact amount of time, but it was approximately that.
Q. You do have billing records that are in some state of preparation although not sent out yet; correct?
A. That's correct.
Q. And you anticipate that you will be adding to that billing for the remainder of this month with respect to this case?
A. That's my expectation.
Q. I would ask counsel that that information be provided to me in a form --
Is it in a form that could be provided, although not a bill at this current time?
A. It's just notes of the amount of time I spent so that I charge them correctly.
Q. And in this four to five hours on the first day that you met with the --
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Well, let me just come back to that in a minute.
Does the rereading of your last deposition in responding at least in your mind to the questions asked there, meeting with the Shook Hardy lawyers, and the travel time, does that account fully for those 50

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hours that you indicated have been --
A. It does, and the 50 is just an estimate, so it may be less than that.
Q. Could it be more than that?
A. I doubt it. That's approximately what I remember.
Q. The hours that you met with the Shook Hardy lawyers, would those be billed at the 250 rate or the 350 rate?
A. The 350 rate.
Q. And then the travel time would be at the 250 rate, and the rereading of your deposition at the 250 rate?
A. That's correct.
Q. Okay. Whom did you meet with during the four to five hours on the first day?
A. John Monica, Vicky Thompson, and Jimmy Davis.
Q. And who's Jimmy Davis?

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A. Jimmy Davis is another lawyer at the Kansas City office of Shook Hardy & Bacon.
Q. Were all three of them present at all times during that --
A. Essentially.
Q. And on the second day, was it the same people or different people?
A. That's my recollection.
Q. Did you take any notes or prepare any notes during any of those meetings?
A. No.
Q. Did you take any notes or prepare any notes subsequent to those meetings?
A. No.
Q. During last month, the approximate four hours that you were working on the Whiteley case, were you working on any other case?
A. Was I working last month on any other case?
Q. Yes.
A. Yes, I was.
Q. What other cases were you working on last month?
A. I was working on Falise, and I was working on the National Asbestos Workers Union, and I apologize, I'm not certain that's the exact title.

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Q. Do you know where that case is pending?
A. I don't.
Q. Falise is in New York; correct?
A. That's correct.
Q. And you don't have any recollection of where the National Asbestos Workers Union case is pending?
A. Sitting here today I don't.
Q. Have you been deposed in either of those cases?
A. No.
Q. Do you have depositions set in either of those cases?
A. No.
Q. Have you been asked to provide deposition testimony in either of those cases?
A. No.
Q. Any other cases that you were working on the

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last month?
A. Just Whiteley.
Q. How about in November --
That was October; correct?
A. That's correct.
Q. How about November? You already told me about approximately 50 hours in the Whiteley case.
A. November, I've essentially been working only

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on Whiteley.
Q. Since the beginning of this year, do you know how much you have billed in relation to work that you have done with respect to tobacco issues?
A. I really don't.
Q. Do you have an estimate?
A. It would be a very rough estimate, but I would guess for the entire year --
Would it be okay if I gave it in dollars instead of hours, because hours would be a tougher estimate.
Q. Dollars is fine.
A. I expect to make approximately $250,000, and that's a very rough estimate. I'm not certain, but that's as good an estimate I can make sitting here today.
Q. That 250,000, does that include the things that we've just talked about with respect to the Whiteley case?
A. Yes. I attempted to make that to the end of the year.
Q. This is what you anticipate all the way through December?
A. That's correct, but it's a very rough estimate.

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Q. I understand. I won't tell the IRS. I will leave that up to you.
A. I appreciate that. The IRS, though, I'm always careful to make certain that every hour is there, and I do pay income taxes on it.
Q. I had --
A. I just wanted to get that on the record.
Q. I had no doubt, sir, and did not mean anything other than that by it.
What other cases have you worked on this year besides Whiteley, Falise and the National Asbestos Workers Union case?
A. Those are the main ones, I think.
Q. Was the Ohio ironworkers case, at least your involvement in it, this year or was that last year?
A. I only got the completed deposition recently, and I don't remember the date. It seems like it was further ago than this year, but it could have been early this year, but definitely I have worked on my deposition, and I've gotten the completed one back, but I honestly don't remember which year --
My CV would reflect when the deposition was taken.
Q. Did you make any changes or corrections to the deposition that you gave in the Ohio ironworkers

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case?
A. Yes, I did.

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Q. Were any of those other than typographical or, you know, wrong word --
MR. BARRON: Objection; vague and ambiguous.
MS. CHABER: Q. -- where you said "start" and the court reporter thought you said "smart" or, you know, those kinds of mistakes?
MR. BARRON: I'm going to object to the form of the question as being vague and ambiguous especially with the tag on, quote, those kind of things, close quote.
THE WITNESS: The majority of changes were of that nature where my word wasn't -- came out differently than I said, and I attempted to correct it.
MS. CHABER: Q. Are you aware of any substantive changes that you made to the deposition you gave in the Ohio Ironworkers Union case?
MR. BARRON: Objection; vague and ambiguous in this sense with the word, quote, substantive close, quote.
THE WITNESS: Yes, I think reasonable people would argue what was and wasn't substantive. I can't --
I attempt to correct those things that I think people should have corrected. Words were in there

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that were incorrect, the type of tumor, when I said something, so I tried to correct that.
That's about the best I can answer that question.
MS. CHABER: Q. Do you know whether or not the corrections you made to your deposition were ever recorded in any fashion so that the corrections exist as part of that deposition now?
Does that make sense to you?
A. I think I sent my corrections to Vicky Thompson.
Q. Whatever corrections you made to the deposition you believe went through the Shook Hardy office, as opposed to say going directly to the court reporter?
A. That's definitely correct. I never work directly with the court reporter.
Q. Do you know or do you have any information that the corrections that you made to the deposition then went from Shook Hardy to the court reporter or to any other means of having that information disseminated beyond Shook Hardy and yourself?
A. I have no knowledge of that.
Q. When you said you reviewed your deposition that had arrived as part of your preparation for this

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case, was it at that time that you made corrections to it?
A. No.
Q. When were the corrections made to it?
A. Several months ago.
Q. Did the copy of the transcript that you were reviewing -- rereading, rather -- in preparation for the Whiteley case, contain the corrections that you had made previously?
A. I didn't read it in that way, and I didn't check that, but there are still mistakes in the transcript.
Q. Did you see any addendum attached to them

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that had page, line, here's the mistake and here's how you previously corrected it?
A. I did not see that.
Q. As you read through the transcript, did you see any cross-outs or correct words substituted for incorrect words?
A. I did not see any, but I wasn't -- I was reading it in a different context and didn't look carefully for those kind of changes.
Q. How much time have you spent working on the Falise case this year?
A. Until last month we didn't keep separate

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records by case. What I did was bill, and I didn't keep in my mind one case as being different from another case.
Q. And then that changed last month?
A. That changed last month.
Q. Was that at your request?
A. No. It was at Shook Hardy & Bacon's request.
Q. Were you given any reason or do you have any understanding as to why there was a change in the way that you keep records?
A. I don't know why the change was made.
MR. BARRON: We've been going for about an hour. They traveled from the East. Let's take a break now.
Do you want to try to move to the other room at this point?
MS. CHABER: Yes, we might as well. We may otherwise end up sitting down and moving.
Off the record.
(Recess taken from 2:30 p.m. to 2:55 p.m.)
(Plaintiffs' Exhibit 6 was marked for identification.)
MS. CHABER: Q. During the break, did you have any discussions with anyone about anything about

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this deposition or the substance of your testimony?
A. They basically told me to keep my answers short.
Q. Had you gotten that advice in the past?
A. Many times.
Q. I hadn't noticed you being particularly long-winded.
Doctor, I'd like you to show you what's been marked as Plaintiffs' Exhibit 6. Is this an expert report that you rendered in the Falise case?
A. (Reviewing document).
Yes, it is, and I haven't checked all the appendices and so forth, but that's what it is.
Q. With the exception of the 14 -- the first 14 pages, your signature appears on the bottom of page 14, and I believe they're on the first 14 pages I have --
A. My signature does appear on page 14.
Q. With the exception of the first 14 pages, are the attachments to this, the same as are exhibit -- on your Exhibits, I believe, 3 and 4, other than the addition of the three Whiteley items?
You can take a moment and look at it.
A. I believe that's correct.
Q. When was the last time you read this expert

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report in Falise?
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A. My best recollection is the end of last month.
Q. Is that when this --
It's not dated. Do you know when this was prepared?
A. Yes. I prepared this approximately the last couple of months when it was completed, so the last month.
Q. I take it you're familiar with the opinions and the statements contained in these 14 pages?
A. Yes. I wrote this.
Q. Are you aware, sir, of any additional opinions that you have with respect to the Whiteley case that are not contained within these 14 pages?
MR. BARRON: I'm sorry. May I have that read back?
(Whereupon, the record was read as follows:
"Q. Are you aware, sir, of any additional opinions that you have with respect to the Whiteley case that are not contained within these 14 pages?")
MR. BARRON: I'm going to object to the form of the question as being, number one, vague and ambiguous; and number two, argumentative not in tone but in form.
THE WITNESS: I think even within these 14
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pages, I reserve the right to respond to things that may occur, and other things people -- other witnesses may say, and so forth, and to read additional materials and so forth, the standard kind of things.
MS. CHABER: Q. As you sit here today, without being given additional materials or opinions of other people that you have not already considered, does this 14-page report reflect the opinions that you have with respect to the Whiteley case?
MR. BARRON: Objection; the same grounds.
THE WITNESS: This report gives the majority of my opinions in the CTR issue.
MS. CHABER: Q. Do any opinions come to mind now that you have with respect to Ms. Whiteley's case that are not reflected here in these 14 pages?
A. Sitting here today, nothing comes to mind.
Q. The last page of six -- and this may be contained within another exhibit, but it happens to be right here -- is this the listing of your prior testimony that you made reference to earlier?
A. That's correct.
Q. And, correctly, there are seven prior depositions, but there is also indicated testimony in various administrative and legislative proceedings, and those make reference to your curriculum -- your CV. I
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can never pronounce it right, so I'll just say CV.
Have you testified before any administrative or legislative body with respect to tobacco?
A. No, I have not.
Q. Have you testified before any administrative or legislative body?
By that I would include committees of legislative bodies. Is that clear to you?
A. On any topic?

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Q. No, no, no.
You have, according to this, testified in administrative proceedings; correct?
A. That's correct.
Q. And you have testified before legislative bodies or subcommittees of those legislative bodies; correct?
A. I have.
Q. Okay. Have any of the testimony before any of those administrative or legislative bodies or subcommittees of those bodies been with respect to causation of disease in human beings?
A. I don't believe so. They're all listed in my CV. They related mainly to other topics, I believe.
Q. What is your present employment?
A. I'm presently retired from North Carolina

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State University.
Q. Do you have any ongoing duties at North Carolina State University?
A. No.
Q. Other than the consulting work that you're doing on the tobacco issues for these lawsuits, do you have any other consulting work ongoing?
A. As of today, no.
Q. How about as of January of this year?
A. It varies because I work for a couple of organizations where they occasionally call me and ask me to do something for them, but currently I have no pending job with either of those places.
Q. What organizations were you just referring to?
A. I should amend that slightly. I have a consulting agreement with a small company in North Carolina but they haven't used my services either for sometime, and I don't know if that relationship even still exists.
Q. What type of company is it?
A. It's a company that develops equipment for injecting eggs. It's a company that has a special process to inoculate chickens before they're born.
Q. And injecting eggs with what?

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A. Vaccines. Well, anything they can dream up that would benefit a chicken before it's born.
Q. So are you the person that I should ask which came first, the chicken or the egg?
A. No.
Q. Okay. What other companies or organizations were you referring to that you potentially might consult for but it varies?
A. I've listed in my CV all these consulting arrangements, but the National Cancer Institute and the National Institute of Environmental Health Sciences use me as a site visitor and reviewer of their scientific projects of their contractor, mainly. I guess they're not all contractors. Grantees and contractors.
And then I do site visits for an organization called the -- I'm sorry, they changed their name; I'm going to have to give you the old name, but it's the American Association for Accreditation of Laboratory Animal Science, A-L-L-A-S. I can never remember the new name.

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Q. Again, is it for the same type work, as a site visitor and reviewer?
A. It's slightly different. The National Cancer Institute and NIEHS use me to evaluate research. ALLAS uses me to evaluate facilities for research.

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Q. When was the last time that you did any consulting for NCI?
A. It's listed in my CV, and I don't -- it's been probably late last year, but that's a guess.
Q. Maybe what you could do is take your CV and put it in front of you, and you can direct me to the page or refresh your recollection with that information.
A. Thank you. That would be much easier.
Q. This isn't a guessing game.
A. On page 9 it appears that the Cancer Institute last used me April 1998. And, actually, I didn't -- that was a teleconference review panel, so I did that from my home.
Q. What was it that you did?
A. You can see on page 9 it lists -- it's the last item before we switch to "Consulting for Academic Institutions." It gives the grant number, and what this is it's a cancer center grant, and I was on a panel to review should the cancer center grant be reapproved.
Q. What was the grant? I mean, what was it about?
A. I'm sorry. Cancer centers are --
The National Cancer Institute has set up throughout the country, some number of so-called cancer centers which are very large research groups set up to

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study definite end points in cancer, and each one has a slightly different approach.
This one, the title is "Vectors for Cancer Gene Therapy," so their scientific approach is to study vectors that can be used to mute genes to treat cancer.
Q. I assume there were other people involved in this teleconference review panel?
A. Yes.
Q. Did you have a specific assignment within that?
A. As a reviewer, you are required to review the entire application, and also to -- it's split up, and I was to review the pathology core which is a part of the grant where all the pathology for all the projects is done, and the administrative core. So I was supposed to review the administration of this cancer center was my specific assignment.
Q. And the NIEHS, the last involvement you had with them?
A. Was January 16, 1997.
Q. And if I'm looking at the correct one, is that the dioxin equivalency factors?
A. That's correct.
Q. What does that mean, toxic equivalency factors? What are TEF's, as it says in parentheses?

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A. They're attempting to find a way to measure dioxin toxicity, and they have put out a request for people to come up with new ways to do that. I was on a review panel to select which of those would be funded.
MS. CHABER: Would you read me back the

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answer?
(Whereupon, the record was read as follows:
"A. They're attempting to find a way to measure dioxin toxicity, and they have put out a request for people to come up with new ways to do that. I was on a review panel to select which of those would be funded.")
MS. CHABER: Q. Have you ever been on a panel for any organization to review ways to measure toxicity of tobacco or tobacco smoke?
A. Not directly, but since tobacco smoke is a composition of many compounds, I've been on many panels to review those individual compounds, but I've never been on anything that specifically looked at tobacco in its entirey.
Q. Or smoke in its entirety generated by cigarettes?
A. That's correct.
Q. Are you familiar with ways to measure tobacco smoke toxicity?

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A. Yes.
Q. Can you tell me what ways you believe are accepted ways to measure usual tobacco smoke toxicity?
A. Well, there are a lot of ways to do it. One would be to directly submit animals to different levels of tobacco smoke, and measure the results. You could also fraction it and look at the components one by one.
Q. Have you ever done where you've exposed animals to tobacco smoke at various levels to determine the toxicity?
A. This isn't meant as a joke. I did do a science fair project in junior high or high school where I exposed mice to tobacco smoke in an attempt to give them lung cancer.
Q. How did you do that? What was your --
A. I had no direction. I was a either junior high or high school student.
Q. I don't want to embarrass you or anything but without looking at your CV, what year would that have been?
A. I graduated from high school in 1960.
Q. Okay.
A. So it would be sometime prior to 1959.
Q. Okay.
A. I can't remember -- I've tried to remember

00053

the date, but I don't even remember if it was junior high or high school.
The question was how did I do it?
Q. What was your methodology?
A. I went to a pet store and bought two mice.
Q. White?
A. Yes, they were.
One was control that was not exposed to the tobacco smoke. The other was test, and I took a small chamber -- I made a small chamber out of hardware wire, hardware cloth, and covered it with aluminum foil, and then I put smoke in there and let the animal breathe it for several hours everyday.
Q. How long was this experiment?
A. I don't remember. It was --
Q. Weeks? Days? Months?

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A. I would guess weeks.
Q. How did you get the smoke --
I mean, did you smoke a cigarette and exhale into it? Or how did you get the smoke into the chamber?
A. I took a small rubber bulb, attached it to the cigarette and pumped it to cause the cigarette to smoke. The smoke would come out at the front of the cigarette.
Q. Were these filter cigarettes?

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A. I don't remember.
Q. Was it a particular brand of cigarettes?
A. I don't remember.
Q. Did you vary the brand?
A. I don't remember.
Q. Was part of your protocol to have the same brand's smoke in the chamber?
A. I was not that sophisticated.
Q. And the other mouse was smoke-free?
A. He probably got some secondhand smoke.
Q. Was he in the chamber as well?
A. No.
Q. How would he get second-hand smoke?
A. My entire house got full of smoke.
Q. Can you describe --
A. From me pumping it into this little chamber, the smoke went out into the room, and you could smell it throughout the house.
Q. So after however long a period of weeks I believe you said, what happened? What did you do next?
A. The mouse that was in the chamber became healthier and healthier, and the control animal died.
Q. Did you have any conclusion as a result of that that was part of your experiment?
A. I don't remember. I can't find the book for

00055

it, so I don't remember what the conclusion was.
Q. Well, did that cause you to conclude that smoking cigarettes was healthy?
A. No. At the time it wasn't even allowed to be shown at the fair because the supposition was it should have caused cancer, and it didn't.
Q. So you prepared this experiment, but you weren't allowed to display it?
A. That's correct.
Q. Okay. I take it you didn't win the prize at the science fair, then, if they weren't allowed to show it?
A. I never won a prize at a science fair.
Q. What happened to the mouse that you had smoke? Did he continue to -- he or she continue to smoke when the project was over?
A. No.
Q. Did the mouse live after the project?
A. I don't remember. I believe he was my pet mouse until his death.
Q. Did you or any member your family smoke in your household?
A. I have to -- the character of the question --
Q. At that time.

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A. No one was supposed to smoke in the house.

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My brother did.
Q. Was your brother a teenager?
A. He didn't smoke concurrently with the experiment if that's what you're asking.
Q. Was your brother a teenager?
A. At that time, no. He was younger than I am.
Q. When you say he didn't smoke concurrently with the experiment, was he at the time a smoker but not smoking near the mice?
Or what do you mean by "not currently"?
A. I think at the time this experiment was going on, no one in my family smoked.
Q. You did write up a paper that you submitted?
A. I don't remember, and I could find no trace of it if one of existed.
Q. Other than that experiment, have you ever conducted experiments with respect to smoke?
A. With respect to whole smoke, no, I have not.
Q. Can you tell me what other methodology is appropriate to use to measure the toxicity of tobacco smoke?
A. Can you ask a more specific -- I don't understand --
Q. Well, we got started on this because I was

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asking you questions about the NIEHS, the review panel where you were reviewing materials evaluating dioxin toxic equivalency factors, and I thought you had told me that TEF's were a way to measure toxicity.
Correct?
A. That's one, yes, that's the way they were trying to develop.
Q. Right. What methodology or ways to measure toxicity of tobacco smoke are there?
A. In addition to inhalation of whole smoke, you could try exposing a skin surface to whole smoke, or you could try exposing it to fractions of whole smoke.
Q. Have you done either of those?
A. No, I have not. I should amend that somewhat in that I've studied many, many compounds, some of which are present in tobacco smoke, but I would have to go --
They're all in my curriculum vitae.
Q. Which ones would be specific to --
A. I never really made a comparison. I'm just saying some of those could be. It's starting on page 24 and going through 25, 26, 27, somewhat on page 28 are the list of compounds that I participated in their study.
Q. And those are listed under "Technical

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Reports"; is that correct?
A. That's correct.
Q. Okay. Looking at page 24 under "Technical Reports," can you tell me which of those studies involved any fraction of substance of tobacco smoke?
A. I don't know all the things that are in cigarettes. There's a large number of compounds, and I've never crossed-referenced to these. I was merely saying there's a possibility that some of these may be in tobacco smoke. I have studied them. So I was trying to give a complete answer --
Q. And what I'm trying --

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A. -- but I don't specifically know --
Q. -- to ask is which of these --
A. -- which of these are specifically in tobacco smoke.
Q. Can you tell me which of these in -- and I asked you about page 24, but is that true with respect to 25, 26 and all the way through 28?
A. I would give you the same answer, that I have never gone and cross-compared.
Q. If you look at it now, are there any that you recognize as being substances that are a fraction of tobacco smoke?
A. I don't know all the things that are in --

00059

There's so many in a fraction of tobacco smoke that I don't know them all, but I don't see any obvious ones as I look through the list.
Q. Do you know if there's phenol in tobacco smoke?
A. I don't know.
Q. Have you ever been provided with any of the additivies -- Strike that.
Have you ever been given information with respect to the nature or extent of any of the additivies of any commercial cigarette?
A. No.
Q. Are you aware through any means of any additivies contained in any commercial cigarette?
A. No. I couldn't, sitting here today, name any additive that's in cigarettes.
Q. Are you aware of any additivies to commercial cigarettes that have been suspected of being carcinogenic?
A. I'm trying to think. I'm aware that some have been suspected. I can't name any of those sitting here.
Q. To your knowledge, have you ever tested or been involved in the testing of any additivies to commercial cigarettes?

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A. No, I have not.
Q. Are you familiar with specific testing protocols for exposing animal skin to tobacco smoke?
A. Animal skin?
Q. Well, I thought you said "skin," and I assumed that meant animal skin. Maybe I misheard you.
A. No. That's what -- I didn't know if you were asking specifically just skin.
Q. Oh, okay.
A. There are standard protocols for testing any compound exposed by exposure to skin, and tobacco smoke could be put into that kind of a protocol.
Q. What are those standard protocols?
A. Any textbook of toxicology or the EPA has standards for that type of test called an acute toxicity test.
Q. And there --
A. I should amend that there are many kinds of acute toxicity tests. That's a dermal acute toxicity test.
Q. Are there any standard protocols for the determination of chronic toxicity?
A. There are standard protocols for determining

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chronic -- they're usually not on the skin, so are we still discussing skin here?

Q. Yes.
A. In general, the determination of toxicity of the skin is done more in an acute fashion, and chronic toxicity is not usually done, but could be done, but it's less common. I'm not certain that there are that many standard protocols to do.
Q. Are there standard protocols to testing body parts other than skin?
A. There are.
Q. And are there any that you're aware of with respect to tobacco?
A. Tobacco and fractions of tobacco could be tested in these systems.
Q. What systems are those?
A. There is a toxicity test for acute toxicity to the eye.
Q. Is there a test for acute toxicity to the lung?
A. Yes, there is.
Q. And what test is that?
A. It's generally called an inhalation toxicology test, and there are both acute and chronic.
Now, when you say "a protocol," there are a variety of ways to do these studies, so it isn't that there's one protocol that everybody uses.

Q. Well, I mean, are there some tests that -- is there a name that somebody says, you know, the Smith test is an appropriate test to use to test the toxicity of tobacco or fractions of tobacco?
A. Reasonable people could argue because you choose an appropriate test, but all toxicity tests can be used to determine the toxicity of any compound. The only one that has a name is the so-called Drays test for acute eye toxicity. The text for acute eye toxicity is the Drays test.
Q. What's the Ames test?
A. The Ames test is a way to study toxicity in cell culture. We call it cell culture, but it's bacteria, so it's a test using no animals but using bacteria instead.
Q. Is that something that you have either done yourself, or evaluated?
A. I've evaluated, and members of my department have done those kinds of testing, but I haven't done any directly myself.
Q. Have you evaluated any with respect to tobacco?
A. No, I have not.
Q. Have you seen or been provided with any toxicity tests done by any tobacco company that has not been published?
A. No, I have not.
Q. Besides Shook Hardy & Bacon, what other law firms have you consulted with?
A. I haven't consulted with any.
Q. Is it true, then, that all of the work that you have done in relation to tobacco litigation has been through the Shook Hardy law firm?

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A. That's correct.
Q. Have you ever consulted with any scientists who were then presently employed at a tobacco company?
A. Have I ever consulted --
In the capacity of a consultant? Is that -- I don't understand your question. I'm sorry.
Q. Have you had any occasion to consult with any scientist presently, at the time of the consultation, employed by a tobacco company?
A. I haven't had any interactions with company scientists in my capacity as a consultant.
Q. Have you had any interaction with any scientist then presently employed by a tobacco company in any other capacity?
A. Yes.
Q. With whom?
A. I talked to David Doolittle at a recent

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scientific meeting. He was previously a post doc. at the organization I used to use, CIET.
Q. What tobacco company was he working for?
A. I think R. J. Reynolds.
Q. Was this something -- you were both at the same conference?
A. That's correct.
Q. What was the nature of your discussion with him?
A. Purely personal, how are you doing.
Q. Nothing to do with tobacco?
A. Nothing do with tobacco.
Q. Okay. I should have qualified, then, my question: Have you ever had any contact with a scientist who was then presently working for a tobacco company about tobacco?
A. No.
Q. Are you familiar with any inhalation studies related to the inducing of emphysema in animals?
A. Yes.
Q. What studies are you familiar with?
A. Well, they're published papers. I can't -- I'm only very generally familiar with them. I can't list them.
Q. Do you know if any of them are contained

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within the materials provided and listed in either Exhibit 3 or Exhibit 4?
A. Probably. There's 6400 scientific publications referenced in here in one way or another, and among those are probably studies relating to the same things in the published literature, but I can't specifically name you one.
Q. Do you have recollection of having read or reviewed any inhalation studies involving inducing emphysema in animals?
A. I have read such papers. I cannot give you -- I mean, I have very fleeting memory of any such, but I couldn't give you which paper. There are such papers in the open published literature.
Q. Have you read any recent articles -- by that I mean published within the last two years -- relating to inhalation studies inducing emphysema in animals?
A. I don't think so, but I couldn't be absolute certain on that.

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Q. Do you believe that cigarette smoking induces emphysema in animals?
A. It's a very complex question because the whole etiology of emphysema seems to be slightly different, but I do believe lesions which look like emphysema have been induced in laboratory animals with

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cigarette smoke.
Q. Do you know which animals?
A. I really don't.
Q. Are you familiar with any studies of animals contained within homes of smokers, looking at disease?
A. Yes.
Q. What studies are you familiar with?
A. Once again, there are some studies where veterinarians, I believe at Davis, California, tried to examine dogs in households of smokers.
Q. Do you recall what the conclusions of any of those studies were?
A. I don't specifically. It seems to me that they showed some correlation, and that's probably the reason they got it published, but I don't -- that's all I can remember.
Excuse me. Was the question emphysema at this point, or was it any --
Q. Any.
A. Okay.
Q. Were you responding specifically to emphysema?
A. No. I was responding to any disease.
Q. Did you have any particular diseases in mind?

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A. No. I just thought if you were making it specific, I'd have to think harder if it was that specific.
Q. Have you ever been involved in, yourself, or reviewed the works of others with respect to benzopyrene?
A. Yes.
Q. And is that more than one study?
A. Yes.
Q. Were you involved in it, yourself?
A. I don't believe so, but I may have -- It's a very commonly used compound.
Q. Have you ever been involved or reviewed any studies involving benzopyrene as it relates to cigarettes?
A. Yes.
Q. What studies were those?
A. Well, there are many studies in the CTR, collection of publications that have benzopyrene as one of the active ingredients that was being studied.
Q. Do you believe benzopyrene is a toxic substance?
A. In high enough doses.
Q. What's a high enough dose for benzopyrene to be toxic?

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A. I don't know off the top of my head, but all compounds are toxic at different doses. So no compound is toxic at all doses.
Q. Are all compounds toxic?

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A. At some dose almost all compounds can be toxic.
Q. And you don't know the level of benzopyrene --
A. No.
Q. -- needed to be toxic?
A. There are published papers but I don't, sitting here today, know what that toxic level is.
Q. Do you believe that there's benzopyrene present in cigarette smoke?
A. Yes, I do.
Q. Do you believe it's present in sufficient doses to be toxic?
A. It's unknown. It's in a such a small dose, it's --
Are you asking me acutely toxic?
Q. No; chronically toxic.
A. It's unknown, but in the small doses that are there, it's unlikely that it is.
Q. What dose would be required for benzopyrene in smoke to be toxic?

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A. I don't know.
Q. Have you ever looked at that issue?
A. Well, do you mean for humans?
Q. Well, let's start out with animals.
A. In animals it is known.
Q. How much is it required to be toxic in animals?
A. I don't know offhand. There are many papers, and it's in orders of magnitude higher than what's present in cigarettes.
Q. With respect to humans, do you know what level or what dose of benzopyrene is needed for chronic toxicity?
A. Many.
Q. Have you looked at that issue?
A. I don't think anyone knows the answer to that question.
Q. Let's try some generalized things.
How many articles have you published?
A. Can I look at my CV?
Q. Absolutely. Remember, no memory test.
A. Journal articles, I've published 30 --
Well, I'm sorry. Some of these still are in preparation.
I've published 33.

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Q. Of those 33, how many were peer review?
A. I believe all of them.
Q. And of those 33 peer review articles, how many were reviewed by lawyers before they were published?
A. Probably certainly some of them. I don't know -- I don't know specifically. In the review process of some organizations that I belong to, lawyers were involved in that review, but I don't remember specifically. I can't pick one here specifically.
Q. Can you recall any paper that you published in a peer review article for which you made any changes as a result of a lawyer as opposed to a scientist?
A. Often in the review I didn't know who the reviewers were, and there were internal reviews at some

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of the organizations, and they may have been lawyers.
Q. I'm asking that you're aware of.
A. That I'm aware of, I don't think -- among my journal articles, I don't think there were any, but I don't know that for a fact.
Q. I'm just asking what you're aware of.
When you say among your journal articles, are there other articles that you have listed --
A. I have -- I was an editor for four books, and 15 -- well, wait a minute; one of those is still --

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14 book chapters, 57 extracts, 38 poster sessions.
I have letters to the editor in here, to be complete, but I'll skip those because they're generally not reviewed.
One book review and a number of large number of technical reports, 71 technical reports.
Q. How many of those various categories of documents you've just referred to, are you aware that lawyers reviewed and made changes?
A. That I'm directly aware?
Q. Well, let's start with directly aware.
A. I'd say three of the technical -- well, wait a minute -- two of the technical reports, and it's possible that all of the technical reports because this went through a review more likely where there were lawyers involved, but I was unaware of all the reviewers.
Q. Is that what you mean when you were talking about directly aware --
A. Directly aware --
Q. -- you would know about?
A. -- there's two for sure I know lawyers participated in. A large number of these at the cancer institute, probably it occurred, but I have no knowledge of that because I don't know all of the people who

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reviewed these before they went out.
Q. Which were the two technical ones that had lawyers review that you aware of? Can you give me a page number?
A. 70 and 71.
Q. Were you asked to make any changes by the lawyers?
A. Lawyers participated in drafting them.
Q. And these are environmental impact reports that are partially scientific and partially legal documents?
A. That's correct, to my understanding of the phrase "legal documents." I'm not certain of what meaning that might have, but they were official --
Q. Well, you're familiar with environmental impact reports that certain legal requirements -- that certain things be met and put in the reports, and so forth?
A. That's what these were.
Q. Okay. Are you aware of any purely scientific reports as opposed to ones that had a legal context like an environmental impact report for which lawyers reviewed and recommended changes that you're aware of?
I'm not asking you to speculate.

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A. Not that I'm aware of.
Q. In any of the scientific studies or publications you have been involved in, are you aware of lawyers being the determiner of whether the project was funded or not?
MR. BARRON: I'm sorry, could I have that re-read?
MS. CHABER: It probably was a bad question.
MR. BARRON: It may be okay. I just lost it.
(Whereupon, the record was read as follows:
"Q. In any of the scientific studies or publications you have been involved in, are you aware of lawyers being the determiner of whether the project was funded or not?")
THE WITNESS: Yes.
MS. CHABER: Q. And what ones are those?
A. There are many examples. Do you want --
Q. I want some, yes.
A. When I was at Stanford University, lawyers said that money could not be accepted for a major project because they did not like the language of the contract. And, in fact, every contract probably we had lawyers objected until changes were made, and in some cases, changes couldn't be made and so the funding was

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never approved.
Q. Are you aware of any projects or proposals for projects for which lawyers made the determination about whether or not the science was good?
A. Sitting here today, I can't directly think where I directly knew that.
Q. Have you ever been involved in any studies that looked at the toxicity of substances in combination with each other as opposed to looking at any individual substance?
A. Yes, I have.
Q. Which studies would those be?
A. They're probably not published.
Q. Are there confidentiality agreements with respect to those studies that are not published?
A. Actually, I do have a couple in here where there were more than one compound, as I think about it, but I took the question to mean bigger mixtures than just two. There are probably a couple in here where we did two together.
Q. Well, are there some substances that in combination have greater toxicity than either substance might alone?
A. Yes.
Q. Are you aware of any studies that you did

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looking at that issue of whether or not the substances in combination had more toxicity than alone?
A. I would have done studies like that.
Q. Can you give me some examples?
A. Probably some of these -- a lot are not published because those studies are exceedingly difficult.
Q. And why is that?
A. You have a problem of which dose of each --
It's very difficult to do a single compound, and then when you begin to mix them, which mixture do

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you use. And then as you add a third -- as you add each compound, it becomes increasingly more complex, and at the end you only know the answer for whatever mixture you chose, and that may have no relationship to the next mixture that you might choose.

Q. And it would depend on the direct composition -- excuse me -- the direct amount of each compound?

MR. BARRON: Objection, vague and ambiguous.

MS. CHABER: Q. When you're talking abut the difficulty that's compounded by looking at more than one substance, is one of the things -- the pieces of information that you have to have, the amount of each of the substances?

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A. That's correct.

Q. And as you add in additional substances, does that compound the problem even further in determining toxicity?

A. It does.

Q. Are you familiar with any scientific examination of rabbits, looking at whether or not cigarette smoke could cause disease in that animal population?

A. I probably have because I've looked at different animal species, but I don't think any of -- the rabbit is not a common model.

Q. Are you aware of any studies done specifically on rabbits inducing emphysema from cigarettes smoke?

A. I can't name you any sitting here today.

Q. By the way, when you did your science experiment, did your mouse resist the smoke initially?

A. I don't remember that it did. I was not sophisticated probably enough to know, and I would have had difficulty determining if he was just resisting being in a little box made out of Saran-Wrap or aluminum foil.

Q. Have you done any studies or evaluated any studies as to the path-biology of smoke-induced

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emphysema?

A. Would you repeat the question?

Q. Yes. It was a bad question. I'll ask you a different one.

Have you done any studies or reviewed any -- Strike that again.

Have you done any studies or evaluated any studies on the patho-biology of emphysema in relation to cigarette smoke?

MR. BARRON: Objection; compound.

THE WITNESS: Just in a very general sense. I've read many papers, but I haven't focused on that end point or that model.

MS. CHABER: Q. Do you know whether or not any of those papers that you've read are contained within the materials that you've provided and enumerated in Exhibits 3 and 4?

A. It's possible and likely, but I've read so many papers during my career that it would be very difficult for me to tell you that -- answer that question more specifically because there's so many papers referenced in here.

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Q. Would it have any bearing on any opinions that you bring to this litigation if there were papers on cigarette smoke causing emphysema?

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A. That's a very difficult question.

Q. I believe that -- Let me put it this way: I understood you to say that you believe that cigarette smoke has induced emphysema in animals.

Is that correct?

MR. BARRON: Objection; argumentative as to form to ask him what his testimony was.

THE WITNESS: It's not an end point that I spend a lot of time examining or reading. I have read papers. There are many other end points that I'm much more conversant with. No person can be completely conversant in every end point on every animal and every paper because of the sheer volume of the literature.

MS. CHABER: Q. Do you believe that there is any relevance to any of the opinions you have offered in tobacco litigation of cigarette smoke inducing emphysema in animals?

MR. BARRON: Objection.

THE WITNESS: Could you --

MS. CHABER: Let's get it read back.

(Whereupon, the record was read as follows:

"Q. Do you believe that there is any relevance to any of the opinions you have offered in tobacco litigation of cigarette smoke inducing emphysema in animals?")

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MR. BARRON: Let me just make an objection.

I object to the question as ambiguous, and I think there's a syntax problem with the question. We may have a syntax problem with the question.

THE WITNESS: I'm having difficulty understanding the question. Can you rephrase it or --

MS. CHABER: Yes.

Can I have the question back?

(Whereupon, the record was read as follows:

"Q. Do you believe that there is any relevance to any of the opinions you have offered in tobacco litigation of cigarette smoke inducing emphysema in animals?")

THE WITNESS: It's hard for me to understand the question, but I believe everything is necessary and potentially relevant, but I don't think --

If the question is if I saw another paper on emphysema and animal model, would that change any of my opinions, I don't think it would, but I have an open mind and I would read the paper and determine if it would.

MS. CHABER: Q. Have you ever been provided with any notebooks or research notes of any scientist working for a tobacco company?

A. No.

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Q. Have you had any meetings with any scientists who were previously employed by a tobacco company with respect to their tobacco research?

A. No.

Q. Have you read testimony either in court testimony or before congressional or legislative committees of scientists working for tobacco companies?

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A. Yes.
Q. Who comes to mind?
A. I shouldn't have been quite so --
Any testimony of anybody who's ever worked at a tobacco company?
Q. That's a bad question.
Have you read any testimony of any former tobacco scientist with respect to their belief that they had done work establishing or furthering the issue of whether cigarettes smoke causes disease?
MR. BARRON: Objection; vague and ambiguous.
THE WITNESS: Probably because I've read a great deal of testimony. I read the entire transcript of the trial in Minnesota but I don't, sitting here today, remember specifically anything about what you've just asked, but it's likely I have read such testimony.
MS. CHABER: Q. Do you agree that the overwhelming medical consensus is that cigarette smoking

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causes lung cancer?
A. I don't use the word "causes." I believe the overwhelming testimony is that tobacco is an important risk factor in diseases.
MS. CHABER: Let's take a short break.
(Recess taken from 4;05 p.m. to 4:20 p.m.)
MS. CHABER: Q. Would you agree that smokers are far more likely to develop serious diseases like lung cancer than nonsmokers, or is that outside your expertise?
A. Far more likely?
Q. Yes.
A. I would agree to that.
Q. Would you agree that there is an overwhelming medical and scientific consensus that cigarettes smoking causes lung cancer?
A. I don't use the word "causes," but I will agree it's a very significant risk factor.
Q. Would you disagree with the scientist using the word "cause" in that context?
MR. BARRON: Object to the form of the question.
MS. CHABER: Q. That cigarette smoke causes lung cancer.
A. I can understand how someone could use the

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word because it's a very imprecise word and I can understand how people could use it.
Q. Could you understand how a tobacco company could use the language that cigarette smoking causes lung cancer?
MR. BARRON: Objection; vague and ambiguous. It's not tied down to any specific extent; therefore, also calling for speculation.
MS. CHABER: Let's tie this down. Let's get an answer to my first question, and then we'll tie it down to specific statements.
THE WITNESS: It's an imprecise word, and knowing how they were using it and in what context they were using it, I could understand how anyone could say it causes it, but I can also understand why anyone would say that that's their own word.
MS. CHABER: Q. You wouldn't quibble, however, with the tobacco company that acknowledged that

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cigarette smoking causes lung cancer, would you, using that terminology?
MR. BARRON: Objection to the word, quote, "quibble," close quote, as being argumentative as phrased.
THE WITNESS: I can see how anyone could use the word "causes." It's a very imprecise word, and it's

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used in a variety of contexts so I could see how someone could use it. I understand why it's used in some contexts.
MS. CHABER: Q. Specifically in the context of cigarette smoking and lung cancer, do you disagree with the scientific use of the word "cause"?
A. I don't believe that you can say "cause." There's a scientific use of the word "cause," so I can't answer your question.
Q. You're familiar with the Surgeon General reports on smoking, are you not?
A. I am.
Q. And you have read the Surgeon General defining the word "cause" in the context of cigarette smoking in lung cancer, have you not?
A. I know the Surgeon General has used the word "cause." I don't know that necessarily has been defined. It's a very imprecise word.
Q. Would you dispute the Surgeon General's use of the word -- the definition of the word "cause" in the context of cigarette smoking in lung cancer?
A. I can see how anyone could use "cause," and I can't, sitting here today, think of the Surgeon General's definition of the word "cause." If you could refresh my memory of that, I could give you a more

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definitive answer.
Q. Would you agree that there is an overwhelming medical and scientific consensus that cigarettes smoking causes heart disease?
A. I would agree that cigarette smoking is considered an important risk factor in heart disease, but I don't -- I have the same objection as to the word "cause." We know in both cases it isn't -- we know a lot of things about it that don't fit in my mind with the word "cause."
Q. Would you agree that there is an overwhelming medical and scientific consensus that cigarette smoking causes emphysema?
A. I would agree that cigarettes smoking is an important risk factor in emphysema.
Q. You can't use the word "cause"; correct?
A. I can't use the word "cause"?
Q. You can't use the word "cause" in that context, is that correct, Doctor?
A. I can if I define how I'm using "cause," but I use "significant risk factor" because it's a much more precise way to say what you really know about these diseases.
Q. Would you agree that there is an overwhelming medical and scientific consenus that

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cigarette smoking causes serious disease in smokers?
A. It's the same answer. As long as you define how you're using "cause," I can agree with that

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statement.
Q. Do you consider yourself an expert in issues related to the addictive properties of any substance?
A. No, I do not.
Q. I take it from that that would include cigarette smoke?
A. That's correct.
Q. Would you agree that there is no safe cigarette?
A. That's a hard question to answer. Do you mean --
Q. Just exactly what I said, there is no safe cigarette.
A. There is no safe cigarette?
Q. Would you agree or disagree with that statement?
A. If you smoked one cigarette in your life, I would consider that was probably a safe cigarette. So there's a problem of dose.
Q. How many would you have to smoke in order for there to be no safe cigarette?
A. That's not known. A very small amount.

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Q. Less than ten?
A. Are you talking lifetime, or are you talking daily?
Q. You were the one that was qualifying it, so I'm trying to find the parameters of your qualifications.
What are your dosage qualifications?
A. It's not known, but some number less than probably three or four a day, and the lower the number, the safer it gets.
Q. Do you know if there's any threshold below which there will be no effect?
A. That's unknown. The whole concept of threshold is not known. It's a theory.
Q. Have you evaluated or done any studies looking at what level would constitute a threshold with respect to cigarettes?
A. No.
Excuse me. Did you say done or reviewed?
Q. Evaluated.
A. I don't know any perspective studies, but there have been epidemiologic studies that have looked at low numbers of cigarettes. I'm not real familiar with that literature, but that literature does exist.
Q. You don't consider yourself to be an expert

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in the field of epigemiology, do you?
A. I can read the papers but I don't write those papers if that's a good enough answer.
Q. Have you in your professional capacity been asked to evaluate any epidemiological papers with respect to cigarettes?
A. Not with respect to cigarettes.
Excuse me. I've evaluated a huge number of papers, some of which are epidemiologic, so as part of my work for reviewing CTR, many of those papers are in a sense epidemiology. I have looked at and reviewed them. I haven't evaluated them in the strict sense I think is your question.
Q. I want to get a couple of things on the

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record here regarding the boxes that have been produced.
Twenty-two boxes have been made available for me to review, and they are presently sitting in this conference room.
Are you familiar with these boxes, Doctor?
A. I only saw them when I walked into this room, but I'm familiar that they were sent by Shook Hardy & Bacon, and represent what I think is in the list, and is intended to represent all the materials that I have.
Q. In the list of Exhibits 3 and 4 that we've

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attached here?
A. That's correct.
Q. And as far as you're aware, are the materials contained within the boxes, the specific boxes that are sitting here, your personal copies of these materials?
MR. BARRON: Could I hear that question again?
(Whereupon, the record was read as follows:
"Q. And as far as you're aware, are the materials contained within the boxes, the specific boxes that are sitting here, your personal copies of these materials?")
MS. CHABER: Q. If you need to, I can pull a box over and you can look at it if that makes a difference.
A. The intent was that anything I've ever written anything on is definitely in the 22 boxes, but there are --
I don't take many notes, so there are other pieces that I don't know that that they copied my exact --
I didn't ship all my stuff back. I have shipped everything that I ever put a note on, ever, and that was copied and is in there, but things that are

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exactly the same in my files and Shook Hardy & Bacon's files -- I don't know what was put in the box, but you would not be able to tell any difference in it. It would be exactly the same.
It may be that they sent copies of exactly what they sent me, but I don't know that.
Q. Okay. What I'm trying to determine, though, and I think I understand the answer from what you've just said, that the materials that are physically sitting in these boxes in this conference room at this deposition today are not the copies that you have in your possession?
A. No. I still have my copies.
Q. You still have your own set of copies?
A. Right.
Q. All right.
So in order to prepare and review and do whatever you need to do to prepare to testify at trial, these boxes sitting here today in this deposition are not the ones that you would be reviewing?
A. That's correct.
I didn't understand your original question.
Q. Fair enough. I'm just trying to -- Okay.
Within box 3 --
And I suspect from what you just said, that

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the box numbers are not necessarily meaning with respect to the way you keep your copies of these materials. Is that correct?
A. That's correct.
Q. Okay. So I'll just represent that I pulled this out of box number 3 -- and I put the Post-It on it so I wouldn't mess up the order if there was such an order -- there is the list of literature selected by you. This list actually goes up to 69.
Is this a part of the list that you provided as part of Exhibits 3 or 4?
A. I believe the exact same list is in probably Exhibit -- is 3 one of the --
Q. One or the other of those, and I don't need you to be more precise. This goes up to 69. I believe your list went up to 77, but this is, at least up to 69, the same list that was provided?
A. When I looked at it, I didn't realize it wasn't the complete list.
Q. Okay. And we've talking about the same list, although maybe not as complete as within this material that I --
A. I could answer that better if I look at the other list and compare them, but I believe you're right, but I could give you a more definitive answer.
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I don't have -- oh, here it is.
That's correct.
Q. The list that's in exhibit --
Is that 3 you're looking at, sir?
A. That's correct.
Q. The list that's in Exhibit 3 is more extensive than the list of what I've just shown you, pulled from the box; is that correct?
A. That's correct.
Q. Are you aware of there being --
This, what I've shown you that was pulled from box number 3 is a list, complete list of the literature that you've selected, and the actual -- some portion of the actual literature.
Is that correct?
A. That's what it appears to be.
Q. Are you aware of there existing all of this literature within the boxes of the material?
A. I'm not aware, but that was the intent.
MS. CHABER: Okay.
And, Counsel, are you aware of the existing, beyond this one --
You don't know because you didn't --
MR. BARRON: I didn't look at anything in the box. I'm sure we could try to find out. If you
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want to take the time, we can do it now --
MS. CHABER: No, I don't want to do it now.
To the extent that there is something similar to this in existence, i.e. that has the listing of the literature selected and the actual articles attached, I would ask for a copy of it, and I would ask for a copy of this portion of it which I believe goes up to number 21 on the list.
Is that agreeable?
MR. BARRON: It's agreeable that we would

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provide that.
I will tell you, candidly, that as you well know, as on the other side of those kind of questions, I don't keep a list of all your wishes. If you send me something to remind me --
MS. CHABER: I will send you a letter.
MR. BARRON: -- if you remind me, we will get it done to the extent that we're able to do so.
MS. CHABER: I am going to send you a letter.
And I would also request, Counsel, that the boxes, since these are the boxes that I have reviewed, be maintained in the same manner that they are and numbered the way they are so that when I look for something, I may find it again.

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Is that acceptable, Counsel?
We can work out the details of where they're maintained, but that's my initial request.
MR. BARRON: Let's discuss it. I think it probably could be something we could do, but I don't know exactly how the firm uses these boxes. We'll discuss that during a break, and we can go back on the record with some kind of agreement if we're able to reach one.
MS. CHABER: Okay.
MR. BARRON: I do have an answer to your other question, which is these are not physically the same boxes that physically represent what have been brought here to California for Dr. McAllister.
MS. CHABER: And where are those?
MR. BARRON: What I said. Apparently, these are being kept in some room close by to look at, and I thought you were informed of that.
I think what happened is the office -- either we didn't get around to asking, or we asked and they couldn't accommodate us with space over at Howard Rice, and I think they're sitting in a hotel.
MS. CHABER: You could have brought them to my office. I would have accommodated you.
Q. Have you ever consulted with or discussed

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anything other than personal matters with any employee or past employee of the tobacco institute?
MR. BARRON: I'm sorry. May I have that reread?
(Whereupon, the record was read as follows:
"Q. Have you ever consulted with or discussed anything other than personal matters with any employee or past employee of the tobacco institute?")
THE WITNESS: Of the tobacco institute?
MS. CHABER: Yes.
Wait because she can't read and write what you're saying at the same.
MR. BARRON: The phrase "personal matters" threw me, but I have no --
MS. CHABER: Well, because he said earlier that he had -- when I asked him about employees of a tobacco company, that he had a conversation with someone, and then it turned out it was about personal matters, so I'm trying to eliminate that.
Q. Did you understand my question?
A. I did, and not to my knowledge with regard

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to cigarettes and smoking.
Q. Okay. That's fair enough.
A. I may have on some other topic.
Q. On some other issue, okay.

Do you know any employees or past employees of the tobacco institute?
A. Not to my knowledge.
Q. And I'll ask you the same thing with respect to CTR.
A. I've known members of the scientific advisory board. I've known grantees, contractees.
Q. Have you known anyone who was directly employed by the Cancer for Tobacco Research?
A. Yes, I have.
Q. Who?
A. Well, directly, if you mean do I personally know anyone directly --
By "direct" -- I'm having trouble --
Q. Let me start over again.
Have you met with or consulted with any employees of the Council for Tobacco Research with respect to tobacco issues?
A. With respect to tobacco issues?
Q. Yes.
A. Not to my knowledge.
Q. Have you met with or consulted with any member of the scientific advisory board with respect to tobacco issues?
A. Not to my knowledge.

Q. Do you have any kind of agreement with Shook Hardy & Bacon or any other law firm representing a tobacco company wherein you agree that they may disclose you as an expert in any case?
A. No, I do not.
Q. Are you asked individually each time as to whether or not you agree to be an expert in each case?
A. Yes, I am.
Q. Do you receive any kind of retainer from any of the attorneys or law firms with respect to your tobacco work?
A. No, I do not.
Q. Everything would be billed then on an hourly basis as we discussed previously?
A. That's correct.
Q. Have you ever done any study or evaluated any study with respect to the toxicity of tobacco specific nitrosamines?
A. Not to my knowledge.
I'm sorry. Could you repeat that question back?
MS. CHABER: Let's have it read back.
(Whereupon, the record was read as follows:
"Q. Have you ever done any study or evaluated any study with respect to the toxicity of

tobacco specific nitrosamines")
THE WITNESS: There may have been a problem in your earlier questions if they were phrased the same.
I've evaluated -- depending on how we each use the word "evaluate" -- many articles on many of these -- I've read them, I've considered them, I've

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looked at the science, but specifically I haven't ever done a study or I haven't specifically reviewed someone else's study and progress, that type of thing, but --

MS. CHABER: That's what I had in mind.

THE WITNESS: -- I would have to reserve on maybe the previous questions as well if they were in that same --

It just caught me that I have, in a sense, evaluated --

MS. CHABER: Q. I don't mean to interrupt you, but just so that we're clear, I'm not talking about in your consultation as part of a litigation expert such as you are here today, whether you've ever looked at the materials.

I was asking you with respect to your work as -- and I think you just defined the way I was using the term.

A. Well, in my work as well through the years I've in a sense, depending on how we settle at what

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"evaluate" means, I've probably evaluated a lot of projects, but I haven't specifically done them myself, but I may have read the article, I may have evaluated that article, if you see what I mean.

I think your question is different -- I think my problem is the use of the word "evaluate." If I knew better what you meant by that, I --

Q. I thought, though, when we got here, you had in your concern for the use of that, talked about whether or not you had evaluated it from the standpoint of, in your work, determined or been asked to determine the efficacy of it, the evaluation of it, in that sense, as opposed to you read it and it may form some part of your knowledge.

A. If that's how you're using it --

Q. Yes.

A. -- then I haven't.

Q. So then we're clear and you don't have to correct any, as far as you're aware of the previous responses, I think we've defined that we were sort of on the same wavelength.

Is that fair?

A. That's how I feel at the moment.

Q. All right. That's fair enough.

Have you done any work with respect to the

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toxicity of marijuana or marijuana smoke?

A. No, I have not.

Q. Have you evaluated, in the sense that we've just been using it, any studies with respect to the toxicity of marijuana or marijuana smoke?

A. I have not.

Q. How do you define the word "cause" when you're talking about substance and disease?

A. I like to use "risk factor" because we know it isn't the necessary cause, we know it isn't the sufficient cause, we know it isn't the cause, and it's my belief that most of these chronic diseases have multiple factors which result in the end result, and to say one causes it, implies something that takes it much further.

Now, the problem is you can't say -- lay people can't understand as well what that all means, and

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so if you define cause in the sense that anything that may lead to an increase of this condition is a cause, well, then in that limited context, tobacco smoking causes cancer and the other diseases.
Q. Let me ask you it this way then: Does tobacco smoke and cigarettes -- is tobacco smoke and cigarettes a cause of lung cancer?
A. When you use it as "a cause," that's what

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the epidimiology would lead us to believe. It's actually unknown scientifically, but that would be -- the preponderance of evidence at this point would lead most people to believe that it is a cause, but I've still got the problem I don't believe these diseases are caused by any single thing; it's a combination of things.
And so even "a cause" causes me to -- that's why I like "risk factor" because "risk factor" says it all, and I don't think you're implying anything different in a sense. You're just saying it in a more precise way that reflects what's actually known.
Q. Do you believe that the overwhelming medical and scientific evidence --
Let me get the exact language. Let me start my sentence over again.
Do you believe that there is an overwhelming and scientific consensus that cigarette smoking is a cause of lung cancer?
A. I believe that the overwhelming preponderance of scientific evidence shows that cigarette smoking is an important risk factor in cancer, and I have -- there's problems with using cause unless we carefully define what we're saying.
Q. Is it fair to say, sir, that you cannot

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respond in a yes or no fashion, as had been instructed by Mr. Barron at the beginning of this definition to the question, that there is an overwhelming medical and conception consensus that cigarette smoking is a cause of lung cancer?
MR. BARRON: Hold your answer.
The question is argumentative as phrased, and it misstates the circumstance and the question to which I asked him whether he was able to answer it yes or no.
I think you can ask him a question about that argumentative phraseology, and I recommend you do so.
MS. CHABER: Q. Yes or no, sir, is there an overwhelming medical and scientific consensus that cigarette smoking is a cause of lung cancer?
A. It's one of the causes.
Q. A cause? One of a --
A. You've got still the problem that these are multi -- probably multi-causal diseases.
Q. But my question --
A. Unless they're all there, it isn't a cause.
Q. My question is, yes or no, is cigarette smoking -- Strike that.
Yes or no, is there an overwhelming medical

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and scientific consensus that cigarette smoking is a cause of lung cancer?

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A. It's still difficult for me to answer yes or no without qualifying it, how I'm using the word --
Q. Give me one or the other, and then qualify all you want, sir. I'm asking you is it is a yes, is it a no, or you can't answer that in a yes or no fashion?
A. I can't answer that in a yes or no fashion.
Q. Okay. And would the same be true that you cannot answer in a yes or no fashion that there is an overwhelming medical and scientifiic consensus that cigarette smoking is a cause of emphysema?
A. I have the same answer. I can't answer that yes or no.
Q. And do you have the same difficulty answering yes or no with respect to cigarette smoking being a cause of heart disease?
A. I have the same answer.
Q. Do you have an opinion, sir, as to when medical consensus was established that cigarette smoking was a cause of lung cancer?
A. When it occurred?
Q. Yes.
A. I'm not certain a consensus has yet been reached when using that phraseology. I think the

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consensus has been reached that it's a significant and important risk factor.
Q. Do you believe that there is a -- that reasonable minds can doubt whether or not cigarette smoking is a cause of lung cancer?
A. I do believe that.
Q. And do you believe that reasonable minds can doubt whether cigarette smoking is a cause of emphysema?
A. I do.
Q. And do you believe that it has not been proven that cigarette smoking is a cause of lung cancer?
A. I think we have good evidence that it's a significant risk factor. It has not been proven how it works, how it does it, and what other factors are necessary for it to be a cause if it is one. So that's why I have trouble answering that question.
Q. Do you believe that a reasonable person --
Do you believe that it is reasonable for a person to believe that it has not been proven that cigarette smoking causes lung cancer?
A. Yes, depending on how the word "cause" is used.
I believe it's also possible for a reasonable person to say that, depending again how they use the word "cause."

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Q. Do you believe that there is a medical and scientific controversy as to whether or not cigarette smoking is a cause of lung cancer?
A. Depending on how the word "cause" is being used, there may be a controversy, but if you use "a significance risk factor," most people would agree that has been established.
Q. Have you ever looked at the size of a cigarette pack and looked at the warning?
A. I have.
Q. Have you ever seen the words "risk factor" used with respect to cigarette smoke and lung cancer on the side of a cigarette pack?

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A. No.
Q. What's your understanding of what the warning says on the side of a cigarette pack?
A. There's a variety of sayings.
Q. Let's talk about any that have to do with lung cancer.
A. The Surgeon General -- I forget his exact words -- asserts or says that cigarette smoking causes lung cancer is on the side of a pack.
Q. Do you believe that a reasonable person could believe that it is not proven that what it says on the side of the pack that cigarette smoking causes lung

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cancer, do you believe that a reasonable person could have that belief?
A. Yes, depending on how the word "cause" is used.
MS. CHABER: We're almost done, everybody. I'm looking at the big clock, and I've got three minutes to go of my self-imposed time frame.
I'll take one of those minutes to see if I have anything else.
(Brief pause.)
MS. CHABER: Q. Have you done any studies or evaluated any studies in the same way we've been using the word "evaluated," looking at tar from cigarette and disease?
A. No, I have not.
Q. And other than what --
We have two more checks, which I think should cover the remainder of the time. If that's not correct, of course let your counsel know and he'll send me a bill, and my request, which we can discuss off the record, of the boxes being kept intact as constituted.
Thank you very much, Doctor.
THE WITNESS: Thank you.
MR. BARRON: I have no questions at this time.

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I assume you don't.
MS. FENG: No.
MR. BARRON: Let's go off the record for a minute.
(Discussion off the record.)
MR. BARRON: On the record.
There is no agreement other than that the CCP sections dealing with handling of depositions will control.
Thank you.
MS. CHABER: And you're not going to -- I thought you were going to talk off the record and see if you could respond to me about the boxes.
MR. BARRON: I'm happy to do that. If you want to wait for a minute, I can tell you -- give you a heads up --
We're off the record now?
MS. CHABER: Now we can go off the record.
(Discussion off the record.)
MR. BARRON: Back on the record.
Our agreement is that we're going to retain them in the order that they're now found. I will retain them here. I will not ship them out of here without giving you some warning.

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What I will agree to do is I will agree to
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make all attempts to keep everything in the same box in which they were located when you reviewed them. I will retain the boxes here in San Francisco unless I notify you for some reason it's been so long and so pricey that we think they ought to be moved, or you ought to pay the storage or you ought to pay for copies of them, and I just ask that you then make a reasonable effort to make arrangements to come by and see them so we don't have to have the inconvenience or the expense of storing them here ad infinitum, and I would like, if you wouldn't mind, to work out those details with Lucy or her designated surrogate.

You have not waived any right, and you have us holding them in their present state until further notice, and I would assume that's agreeable.

MS. CHABER: And produced at trial if Hamm shows up?

MR. BARRON: And certainly you have a right to have or review available at the time of trial.

MS. CHABER: Okay.

Do you want to state it for the record?

MR. BARRON: It was.

MS. CHABER: Great. Let's all go home.

Hereupon the deposition was concluded at 5:00 p.m.]

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I, the witness named herein, do hereby certify that my deposition in the above-entitled matter has been submitted to me for reading, correcting, and signing; that my deposition has been read to or by me, and that I have made such changes and corrections herein as I have deemed to be necessary.

Subscribed to this day of , 1999.

THOMAS E. HAMM, JR.

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